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February 1, 2022

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Biden:

We write to urge you to increase meaningful engagement with the European Union (EU) regarding its digital agenda, including the Digital Markets Act (DMA), which may be finalized in the coming months, and the Digital Services Act (DSA). As the EU works to take positive steps to protect privacy, ensure competition, and facilitate digital inclusivity, it is critical that U.S. innovators, and the American workers and internet users behind them, are not placed at an unfair disadvantage by discriminatory trade policies.

We welcome your Administration's commitment to deepening and expanding transatlantic trade and investment relations. We are encouraged to see officials leveraging the U.S.-EU Trade and Technology Council (TTC) to renew engagement and cooperation on the unique challenges facing 21st century democracies. As you have highlighted, the United States and the EU are indispensable partners that must work together to establish trade and technology policies that work for all of our citizens.

We also recognize and applaud the EU's objectives to ensure fair conditions for competition in the digital services sector and improve the welfare of consumers. However, policies intended to meaningfully address the excess market power of technology firms must apply equally to firms based in Europe, China, the United States, and other countries. In its pending legislative proposals, the EU uses arbitrary thresholds to ensure only a handful of large American companies fall within the scope, while failing to regulate similar companies based in Europe and elsewhere. Such regulatory inequities raise serious concerns of discrimination.

The underlying European digital strategy was described by Andreas Schwab, German Member of the European Parliament and influential lead negotiator of the DMA, who indicated the EU should "focus first on the biggest problems . . . go[ing] down the line—one, two, three, four, five—and maybe six with Alibaba . . . But let's not start with number seven to include a European gatekeeper."¹ Mr. Schwab's comments, which reflect no rationale for the scope of the law beyond

¹ *EU should focus on top 5 tech companies, says leading MEP*, Financial Times, May 30, 2021, available: <https://www.ft.com/content/49f3d7f2-30d5-4336-87ad-eea0ee0ecc7b>.

nationality, are alarming.

Left unaddressed, these discriminatory policies will distort trade by disadvantaging U.S. companies and their workers; protecting domestic European firms; and giving an unfair competitive advantage to other foreign companies, including those based in countries like China and Russia, which do not reflect shared U.S.-EU values of democracy, human rights, and market-based principles. Given the global nature of the internet, we are concerned that the European legislative proposals, as currently drafted, will unfairly disadvantage U.S. firms to the benefit of not just European companies, but also powerful state-owned and subsidized Chinese and Russian companies, which would have negative impacts on internet users' privacy, security, and free speech.

The bedrock principle of international trade agreements allows governments to freely apply domestic measures necessary to protect everything from public health and safety to the environment, but this regulation must be done only in a non-discriminatory manner. This fundamental principle of international trade policy ensures that governments can adopt well-meaning laws and regulations to address legitimate concerns, but not use such concerns as a disguise for arbitrary trade barriers or industrial strategies that distort markets and harm workers in other countries. To condone discrimination and to permit it becoming a foundational principle of such laws is unacceptable. Further, allowing such discrimination to continue risks putting U.S. workers on an uneven playing field, which is why longstanding federal law empowers the Office of the United States Trade Representative (USTR) to address discrimination through trade litigation and retaliatory trade measures.


Accordingly, as this Administration continues to improve engagement with the EU and its Member States, including through such fora as the TTC, we urge you to leverage these conversations to ensure that digital laws and regulations do not function as mechanisms for unfair and discriminatory trade protectionism.

With updates to digital competition policy being considered now on both sides of the Atlantic, we see an important opportunity to collaborate on meaningful policies that can promote transparency, competition, and consumer protection for all our citizens. At the same time, we strongly support your efforts to encourage the EU to abandon the discriminatory aspects of these measures and move to a strategy that achieves competition and consumer protection objectives on an even-handed and non-discriminatory basis.

Sincerely,



Ron Wyden
Chairman
Committee on Finance



Mike Crapo
Ranking Member
Committee on Finance

cc: Ambassador Katherine C. Tai, United States Trade Representative
Charles Michel, President, European Council
Ursula von der Leyen, President, European Commission